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RELINQUISHMENT BY COPARCENER AND SUBSEQUENT ADOPTION BY HIS WIDOW.

The law relating to relinquishment by a coparcener continues to be somewhat obscure despite judicial elucidation in several directions. The textual basis for the doctrine is scanty. According to Manu : " If any one of the brethren has a competence from his own occupation and desires not the property, he may be debarred from his share, giving him a trifle in lieu of maintenance."[1] The text of Yajnavalkya states : " The separation of one who is able to support himself and is not desirous of participation may be completed by giving him some trifle."[2] The giving of the trifle seems to be required more by way of imparting solemnity to the transaction than as any regular consideration for it. As stated by Buhler, all the commentators on Manu are agreed that the reason why the trifle is to be given is that future disputes may be prevented[3]. It is now settled by a series of decisions that a relinquishment to be effective need not be supported by consideration and that the requirement as to a trifle is only a token and is not essential, *Sudarsana* v. *Narasimhalu*[4], *Thangavelu Pillai* v. *Doraisami Pillai*[5], *Veerammal* v. *Kamu*[6]. In regard to the true nature of the transaction of relinquishment, there was at one time some difference of opinion. It was sometimes spoken of as an alienation—see *Peddayya* v. *Ramalingam*[7] and *Thangavelu Pillai* v. *Doraisami Pillai*[5]. This view is inconsistent with the fundamental principle of the Mitakshara law that so long as the family is undivided an individual coparcener cannot alienate his interest in the family property, a principle no doubt relaxed in Madras, Bombay and the Central Provinces but still maintained in other parts of India. Also even in the first set of provinces it is still the law that what is practically a gift of the coparcener's interest is not permissible. Again if a relinquishment is treated as a gift, it would be to attract the provisions of section 123 of the Transfer of Property Act, whereas, under the existing law a relinquishment may be oral and informal. The true position therefore seems to be that a relinquishment is not an alienation but only an extinguishment of the releasor's interest in the joint family property. In *Venkatapathi Raju* v. *Venkatanarasimha Raju*[8], a member of a joint family relinquished

1. Manu, IX. 207.
2. Yajnavalkya, II. 117.
3. S. B. E. Series, Vol. 25, p. 375, f.n.
4. (1902) 11 M.L.J 353 : I.L.R. 25 Mad. 149, 156.
5. (1914) 27 M.L.J. 272.
6. (1915) 2 L.W. 850.
7. (1888) I.L.R. 11 Mad. 406.
8. 71 M.L.J. 558 : L.R. 63 I.A. 397 : I.L.R. (1937) Mad. 1 (P.C.).

his interest, left the ancestral village and settled in another place where he and his descendants ceased to have anything to do with the other members of the joint family. In considering the effect of these facts, the Privy Council remarked: "No definement of shares need take place where the separating member does not receive any share in the estate but renounces his interest therein. His renunciation merely extinguishes his interest in the estate, but does not affect the status of the remaining members *quoad* the family property, and they continue to be coparceners as before. The only effect of renunciation is to reduce the number of persons to whom shares would be allotted, if and when, a division of the estate takes place." The matter has also been considered in *Subbanna* v. *Balasubba Reddy*[1], where it was observed: "The relinquishment by one coparcener of his interest in the family estate in favour of the members of the coparcenary does not amount to an alienation; it merely amounts to an extinction of his interest in favour of the others. The gift of his interest to one of several other coparceners would not mean an extinction of that interest. It would mean alienation of it. It is well settled law that there cannot be such a gift to a stranger and it is now clear that there cannot be a gift to a fellow coparcener if the family is to remain undivided." In this view it would follow that whenever a relinquishment is made it should be in favour of all the remaining coparceners and cannot be in favour of one or some of them merely. The benefit of the relinquishment appertains to the entire family as such. The observations in *Peddayya* v. *Ramalingam*[2], and *Thangavelu Pillai* v. *Doraisami Pillai*[3] that the relinquishment can be in favour of one or some of the coparceners for his or their benefit alone cannot now be regarded as correct. In *Anandrao* v. *Vasantrao*[4], one *M* had executed a release of his interest in the family property in favour of his father only. The Privy Council held that the release must be treated as being for the benefit not of the father alone but of the entire coparcenary and the shares of the members should be determined as if *M* had died. In *Karnam Singh* v. *Surender Singh*[5], it has been pointed out that a coparcener can renounce only in favour of all the other coparceners and that even if the renunciation purported to be in favour of one alone it would operate for the benefit of all. A number of cases have held that a relinquishment of his interest by a coparcener should be in favour of all the coparceners *Chander Kishore* v. *Dampat Kishore*[6], *Mt. Tulsi Bai* v. *M. Haji Baksh*[7]. The position is neatly summed up in *Subbanna* v. *Balasubba Reddy*[8], where it is said: "A member of a joint Hindu family governed by the Mitakshara law cannot give his interest in the family estate to one of several coparceners if they remain joint in estate. In such circumstances he can relinquish his interest, but the relinquishment operates for the benefit of all the other members." From the point of view of the releasor a relinquishment is tantamount to a withdrawal from or extinguishment of his interest in the property as if he had then died. Where the joint family estate is partible, his right to a share as well as his right to the benefit of survivorship would be lost. If the estate were impartible and he were the holder, the person next in succession designated by primogeniture should

1. (1945) 1 M.L.J. 140: I.L.R. (1945) Mad. 610, 617 (F.B.).
2. (1888) I.L.R. 11 Mad. 406.
3. (1914) 27 M.L.J. 272.
4. (1907) 17 M.L.J. 184: 9 Bom.L.R. 595, (P.C.) on appeal from *Wasantrao* v. *Anandrao*, (1907) 6 Bom.L.R. 925.
5. A.I.R. 1931 Lah. 289.
6. (1894) I.L.R. 16 All. 369.
7. A.I.R. 1938 Lah. 478.
8. (1945) 1 M.L.J. 140: I.L.R. (1945) Mad. 610, 618 (F.B.).

take. If the releasor were only a junior member, what would be lost is his right to the benefit of succession by survivorship.

A question of some nicety is as to how far the sons of the releasor would be bound by a relinquishment made on behalf of oneself and one's descendants. In its comment on Yajnavalkya's text cited *supra*, the Mitakshara has stated that the male issue of a coparcener who renounces also lose their claim[1]. The Vyavahara Mayukha[2], the Smriti Chandrika[3], and the Viramitrodaya[4] have also taken the same view. Understood literally these would be conclusive, and would apply equally to cases where at the time of the relinquishment there were sons as well as to cases where there were none. Where the family property was partible and there were no sons when the relinquishment was made, the after-born son will naturally be bound. This would be consistent with the rule regarding alienations that a son neither born nor even conceived at the time the alienation was made could challenge its validity. For the afterborn son acquires an interest by birth *quoad* the family property only if the necessary nexus is there, namely, his father's membership of the joint family or possession of any ancestral property. By relinquishment such membership has snapped nor is there any question of ancestral property obtained at partition. If, however, the son had been in existence at the time of the relinquishment, surely, the position becomes different. His birth invests him with rights. He becomes entitled on partition to a share in his own right. Any renunciation by the father, though it may purport to be on behalf of his branch could hardly deprive the son of his independent rights as a member of the joint family on that date. If he is a major his consent would be necessary to make the arrangement bind him. If he is a minor his father would not be competent to sacrifice or prejudicially affect his interest in the family property. In *Mukund* v. *Balkrishna*[5], it was pointed out by the Privy Council that in the absence of a separation or division of the joint family property, a member of the joint family has an indefeasible right to demand partition and his right cannot be affected by a deed executed by his father on the basis of non-existence of the joint family or of joint family property. In *Karnam Singh* v. *Surendar Singh*[6], it has been laid down that the right of the son in the joint family property arising by birth is wholly independent of his father and hence a renunciation of his interest by the father in the ancestral property cannot operate as a relinquishment of the rights of his sons as well. Where the joint family property is an impartible estate the issue becomes somewhat clouded because other factors cut across. There is neither right to partition nor right to common enjoyment available to the members of the family. The holder is solely entitled to the income and is free to alienate the property except where the right has been curtailed, as in Madras, by statute. The junior member on the other hand has only the right to take by survivorship. This is almost like a *spes successionis* except for the fact that the right is the sequel to his right by birth *qua* member of the joint family. Here again if the releasor were a junior member having no son the position would be simple. Would the existence of a son make any difference ? Again would it make any difference if the relinquishment was by the holder parting with the estate in favour of another branch, his son not having joined in the transaction ? In *Chinnathayi* v. *Kulasekhara Pandiya*

1. I. II. 11-12.
2. IV. 16.
3. II. 1, 40.
4. II. 1, 15.
5. (1927) 53 M.L.J. 468 : L.R. 54 I.A. 413 : I.L.R. 52 Bom. 8 (P.C.).
6. A.I.R. 1931 Lah. 289.

Naicker[1], it is observed generally : " There can be no doubt that a member of a joint family owning an impartible estate can on behalf of himself and his heirs, renounce his right of succession. . . . . . The surrender must be to all the branches of the family or to the head of the family as representing all its members." Whether this observation was intended to cover a case where at the time of renouncing succession the coparcener had sons is not apparent. It is true that a father can by his act disrupt his son's status as a coparcener with himself or as between sons *inter se*. It is doubtful if he has power to bring about their separation that way as against his own collaterals. The spirit of the ruling of the Privy Council in *Suriya Rao* v. *Raja of Pittapur*[2] seems to be against the father having such a power. The facts of the case were no doubt different, but some of the observations of the Privy Council seem to be relevant on the present question. There, the holder of the Pittapur zemin and his undivided brother entered into an agreement that in the event of the failure of male issue at any stage in either line the estate possessed by the particular branch should descend in the line of the other and such descent should not be defeated by making an adoption. At the time the agreement was entered into, the zemindar of Pittapur had an aurasa son who was however not a party to the agreement. When, later on, the question arose as to how far the zemindar's stipulation would bar an adoption by his son or other lineal descendant in that line or the right of such adopted son to succeed to the zemindari, the District Judge observed that no head of the family could so bind his living coparcener, by a contract entered into without the consent of the latter as to deprive him of the right legally incident to his interest in the estate, *viz.*, the right to adopt. The Privy Council, in the course of its judgment, in negativing the binding character of the stipulation as against the son observed : " It is clear that the father of Gangadhara could not bind his son, *who was then in existence*, not to adopt or legally stipulate that if he should adopt, the son so adopted should not inherit." (*Italics ours.*) In the *Padamattur zemin case*[3], *M* the then zemindar of Padamattur had in 1829, on his succession to the Shivaganga zemindari, executed an agreement in favour of his two younger brothers in the following terms : " My junior paternal uncle . . . . . . the zemindar of Shivaganga having departed this life leaving no male issue, I have become entitled to the said zemindari. You as my next youngest brother are appointed as the zemindar of the palayaput of the said Padamattur. But as Parvata Vardhini Nachiar, one of the pattam (royal) wives of our above-mentioned junior paternal uncle, is pregnant we shall act as usual in the matter of the said palayaput in the event of her giving birth to a son. But should she be delivered of a daughter, I and my offspring shall have no interest in the said palayaput, but you alone shall be the zemindar and rule and enjoy the same, allowing at the same time as per former arrangement to the younger brother P. B. Tevar the village that has been assigned to him before." A daughter was born to Parvata Vardhini Nachiar. *M* the executant of the above deed had sons at the time of its execution. The sons were not parties to the deed. Many years later, on a finding by the Privy Council that the junior paternal uncle of *M* the executant had become divided in his lifetime from the branch of the executant, the latter lost his succession to the Shivaganga zemin by survivorship. As to the

1. (1946) 1 M.L.J. 164, 174.
2. (1884) L.R. 13 I.A. 97 : I.L.R. 9 Mad. 499 (P.C.).
3. (1878) L.R. 5 I.A. 61 : I.L.R. 1 Mad. 312 (P.C.).

effect of the above-mentioned deed on the rights of the sons of *M*, the executant to succeed to the Padamattur estate, the Privy Council observed that if *M* "had disclaimed any joint interest, his words of renunciation taken alone would seem to imply that he had given up whatever interest he had, as a male member of the joint family in that estate. Their Lordships agree that such a renunciation would not deprive the descendants of *M* of such future rights of succession as they might afterwards have to that property, *treating it as separate property* quoad *them*" (italics ours). The Privy Council added : "Now the plain meaning of those words seems to their Lordships to be that *M* renounces for himself and each of his descendants all interest in the palayaput either as the head or as a junior member of the joint family. . . . . . . The effect therefore of the transaction was to make the particular estate the property of the two instead of the three brothers, with of course, all its incidents of impartibility and peculiar course of descent and to do so as effectively as if in the case of an ordinary partition between the brother on the one hand and the two younger brothers on the other, a particular property had fallen to the lot of the two." These observations, particularly those italicised are significant. If the reference to "as usual" in the deed meant that Padamattur was to serve as a sort of maintenance provision to an younger brother as against his elder brother becoming entitled to the Shivaganga zemin but was to be retained by the holder in case such succession did not fructify to him, it may be said that in this case inasmuch as the executant had not expressly reserved to himself any such right of reverter if succession was lost to him for a reason other than the birth of a son to Parvata Vardhini Nachiar, he could not recover Padamattur from his younger brother. Likewise his sons would be barred so long as *M* was alive. The Privy Council observation, however, goes further and regards the act of *M* as effecting a severance of his branch of the joint family from the branches of the other two brothers who would continue united. In other words, it would seem that in the case of an impartible estate it would be open to a father to sever by his unilateral act his sons from his collaterals, without the concurrence of the sons. To so read would be to confer upon the father a power which in respect of partible property he does not have as against his sons. The facts in the *Padamattur case*[1], are somewhat special and much clearer authority in regard to the issue might be necessary to accept that result.

The effect of the binding character of a relinquishment made by a coparcener as against a son adopted by his widow fell to be considered in *Bapurao Desai* v. *Ramachandra Desai*[2]. In that case there were two brothers who were members of a Mitakshara joint family. The family property consisted of a watan, which was impartible and succession to which was regulated by primogeniture. The elder of the brothers was the holder but in 1887, he relinquished the property in favour of his younger brother. The releasor died in 1914 and the releasee in 1917. The widow of the releasor made an adoption in 1927 and the adopted son sought to recover the watan from the person who had taken it on the death of the releasee. His main contention was that the relinquishment could not bind him. It is clear that even an aurasa son of the releasor born after the release could not reopen it.

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1. (1878) L.R. 5 I.A. 61 : I.L.R. 1 Mad. 312 (P.C.).
2. (1949) 1 M.L.J. 172 (P.C.).

It would be *a fortiori* in regard to a son adopted long after the death of the releasor. An adopted son cannot have rights higher than those of an aurasa son. The latter position has been recognised in the Privy Council decision in *Sri Raja Rao Venkata Surya Mahipati Rama Krishna Rao Bahadur* v. *The Court of Wards*[1]. Adverting to an argument in that case that when a person adopts a boy, he should be deemed to have covenanted that he would not deal with his property so as to affect the rights of the adopted son, the Privy Council said : " Mr. Mayne's argument that there was an implied contract not to make a will, the consideration for it being the giving of the son to the natural father is a novel one and without any authority to support it. If it were right, an adopted son would be in a higher position than a natural son." Whether a son adopted before the relinquishment of the impartible property in favour of a collateral member of the joint family would be bound by the act of his father is a different matter and may raise difficulties. There can however be no such difficulty in a case where the son came into existence subsequent to the relinquishment. In *Bapurao Desai's case*[2], the Privy Council had therefore no hesitation in rejecting the adopted son's claim.

S. VENKATARAMAN.

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1. (1898) 9 M.L.J. Supp. 1 : L.R. 26 I.A. 83 : I.L.R. 22 Mad. 383, 390 (P.C).
2. (1949) 1 M.L.J. 172 (P.C.).